ESTATE PLANNING

By Jane M. Winand, Chief, Legal Assistance Division

One of the clients recently seeking estate-planning assistance at the Fort Meade Legal Assistance Division showed me a Last Will and Testament done when the soldier (now a retiree) was preparing to deploy to Vietnam in 1969. The client was still satisfied with the language in the will and wondered if it was still valid. The client was curious as to whether a will can expire after a certain period of time.

A Last Will and Testament is valid until the testator, the person who created the will, decides to revoke or nullify it. A will is revoked by tearing it up or marking through it with the intent to revoke it, or by signing a new will. Thus, since the Vietnam era will hadn't been revoked by the testator, it was still a valid will. So the client could rest easy? Well, not necessarily. The state laws which govern the probate of wills and the administration of the estates of deceased persons have changed over the years. Prior to these changes, it was necessary to locate one or more of the witnesses that signed the will. Imagine trying to round up the witnesses that signed that Vietnam era will. In the 1980's, states changed their laws to allow for the addition of a self-proving clause at the back of the will. This extra page, signed by the testator, the witnesses, and a notary public, makes it unnecessary, in most cases, to locate the witnesses. The probate of the will is much easier with the self-proving clause. However, many old wills lack the self-proving clause. In the case of the Vietnam era will client, I prepared a new will with the self-proving clause.

As a general rule, you should review your will and other estate planning documents every few years to make sure that nothing has changed. Perhaps you have had additional children, there has been a divorce or death, or you've changed your mind about the person named in your will to serve as guardian of your children. Furthermore, there may have been changes to the law that will affect your estate plans and the imposition of federal and state estate tax. Many clients have valid wills, but may not have a living will or advance medical directive which govern end-of-life medical issues.

Many married couples simply want to leave their worldly possessions to their spouses. It is possible to simplify the probate process in many cases by titling real estate and investments jointly with right of survivorship between a husband and wife. Some states require a property deed to clearly indicate an intent to hold the property with right of survivorship by using such words as "joint tenants with survivorship" and "jointly with survivorship." Other states have laws which treat property, owned by a husband and wife, as held with survivorship. Investments such as stocks and mutual funds may also be held jointly with right of survivorship. However, before changing the title documents on assets, it is best to consider estate tax consequences.

The Fort Meade Legal Assistance Attorneys provide advice and assistance on estate-planning matters. We draft wills, living wills, advance medical directives and powers of attorney. It is a good idea to meet with an attorney to discuss your needs, evaluate existing documents for sufficiency, and determine whether there are additional estate tax considerations and other factors that may affect your estate planning. Should you have estate-planning concerns, you may call the Fort Meade Legal Assistance Office and make an appointment to speak with an attorney. The number is (301) 677-9762.